IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.160 of 2006

Reserved on:16.11.2006.

Decided on:November 27, 2006

Oriental Insurance Company Ltd. …..Appellant.

VERSUS

Satya Devi & Ors. …..Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]No

For the Appellant: **Mr.Ashwani K.Sharma, Advocate.**

For the Respondents: **Mr.Gulzar Rathore, Advocate for respondents No.1 to 3.**

Mr.Harish Dod vice counsel for respondent No.4.

Deepak Gupta, Judge.

This appeal under Section 30 of the Workmen's Compensation Act is directed against the order dated 27.3.2006 of the Commissioner Workmen's Compensation Act, Theog whereby in case No.3/2005 he has awarded compensation of Rs.4,03,320/- and interest of Rs.1,77,460/-, total Rs.5,80,780/- in favour of the claimants and has held the Insurance Company liable to pay the amount.

2. The appeal was admitted on the following substantial questions of law:-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

1) When the employer makes categoric statement on oath before the Court that the salary of deceased employee was Rs.1500/-, whether it is just and legal on the part of Commissioner to work out and award the compensation on the basis of bald statement of claimants claiming wages of the deceased at higher rate?

2) Whether the insurer is not liable to deposit the amount on account of interest on compensation amount and whether the impugned order awarding interest on the compensation amount to the claimants is against the provisions of the Workmen's Compensation Act?

QUESTION No.1:

3. To decide the above question, it would be appropriate to give the background of the case. The brief facts of the case are that claimants are the widow and minor children of Gopi Ram. Gopi Ram died in accident of vehicle No.HP-51-2761 on 19.6.2002.

4. According to Smt.Satya Devi, widow of Gopi Ram, his wages were Rs.5500/- per month. According to the owner, the deceased was getting wages of only Rs.1500/- per month. The Commissioner Workmen's Compensation has accepted the statement of the wife and has held that the wages of the deceased were Rs.5500/- per month and has restricted the same for the purpose of

assessment of compensation to Rs.4000/- per month as provided under the Workmen's Compensation Act.

5. Shri Ashwani Kuamr Sharma, learned counsel for the Insurance Company, contends that the Commissioner had no material before him to assess the income of the deceased at Rs.5500/- per month and submits that when the owner stepped into the witness box and stated that he was paying Rs.1500/- per month to the deceased, the statement of the owner should have been accepted.

6. There is no merit in the above contention. The statement of the owner cannot always be taken as the gospel truth. The Commissioner has to decide the question on the basis of evidence in each case. In this case, the Commissioner has decided to rely upon the statement of the claimant and has discarded the statement of the owner. It would be pertinent to mention that though the owner has stated that he was only paying Rs.1500/- per month to the driver but he has failed to produce any record with regard to the salary he was paying to the deceased or other employees. Even otherwise it is difficult to believe that in the year 2002 a driver would be getting salary of only Rs.1500/- per month as driver of a commercial vehicle. The assessment made by the Commissioner appears to be correct.

Question No.2:

7. The Apex Court in ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya & Another {(2006) 5 SCC 192}*** has held that the Insurance Company is not statutorily liable to pay the amount of interest and the question whether it is liable to pay interest

or not has to be decided in terms of the policy of Insurance. In this case, the insurance policy is on record as Mark "X". It does not contain any condition that the Insurance Company is not liable to pay interest. Therefore, the Insurance Company has failed to prove that it was not liable to pay the interest. It is accordingly held that the Insurance Company has rightly been held to pay the amount of interest.

8. As a result of the above discussion, the award calls for no interference and the appeal is accordingly rejected

(Deepak Gupta)
Judge.

November 27, 2006
(soni)